

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

REF:OCCL:DH

CDUA KA-3280

Acceptance Date: December 27, 2006
180-Day Exp. Date: June 25, 2006

June 9, 2006

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) KA-3280 for
Proposed Noel and Suzi Ochwat Single Family Residence (SFR)

APPLICANT: Ben Welborn, Landmark Consulting Services, Inc., P.O. Box 915,
Hanalei, Hawaii 96714, 808-828-6332

LANDOWNER: Noel and Suzi Ochwat, 865 Balboa Avenue, Laguna Beach,
California, 92651

LOCATION: Haena, Island of Kauai

TMK: (4) 5-9-002:058

**AREA OF PARCEL/
USE:** 7,931 square feet
Same

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The proposed project is located on the 7,931 square foot subject parcel TMK: (4) 5-9-002:058, located in Haena, Island of Kauai. Access to the subject parcel is provided by a thirty (30) foot-wide private roadway corridor (identified as Road G), which provides direct access to Kuhio Highway. The subject parcel is bounded on the west, north and south by private landowners, and to the east by Road G. The subject parcel is located in the State Land Use (SLU) Conservation District, Limited subzone (**Exhibits 1, 2 & 3**).

ITEM K-5

PROPOSED PROJECT:

The Ochwat's propose to construct a SFR in Haena, Kauai, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

The applicant proposes to construct a 3 bedroom, 2 bathroom, 2,990¹ square foot elevated SFR (lanai, storage area, laundry room, living-dining-kitchen area, downstairs storage and *ceramic studio*). The SFR's architecture is of a simple, contemporary tropical design (to take advantage of the mountain views), and will be painted in medium to dark earth tone colors, complemented by finishes (bamboo, hardwoods, faux rock surfacing on the columns). Additional landscaping is also proposed. The SFR meets the required minimum setback of fifteen feet from all sides of the subject parcel (**Exhibit 4**).

According to the applicant, the SFR is located in the State Land Use Conservation District, Limited subzone, and in a Coastal High Hazard Flood Area. On Flood Insurance Rate Map (FIRM) Panel 15000-20030-D (dated October 18, 2002), the subject parcel is located within Flood Zone VE 23, which is designated as a coastal flood area with a velocity hazard due to its potential susceptibility to 100-year inundation by tsunami; Base Flood Elevations (BFE) have been determined at twenty-three (23) feet above mean sea level (MSL).

The existing grade of the subject parcel is approximately 11 feet above MSL, thus the finished floor height of the building must be a minimum of twelve (12) feet, above existing grade to comply with flood standards. This would allow the applicant to construct the enclosed living areas, and overlying roof structure of the SFR within a fifteen (15) foot building height envelope above the minimum MSL floor elevation as required by flood elevations. *Therefore, the SFR has a maximum height of twenty-seven (27) feet to meet Federal and County flood regulations.*

The applicant is requesting a variance of two (2) feet from the Maximum Height Limit of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building."

Existing vegetation consists of a mostly open canopy, coconut, kukui, African tulip, avocado, breadfruit, weeds, bamboo, yellow oleander, cycads, and *Draceana* spp. The applicant notes there are no rare or endangered native plants and/or animals present on the subject parcel. No rare or endangered flora and/or fauna were encountered, or documented on the project area.

The applicant notes an Archaeological Assessment of the subject property was conducted, and no significant cultural sites and/or deposits were discovered. No archeological and/or historical resources would be adversely affected by the proposed project. Underground utilities, such as,

¹ Staff notes this comprises an 1,585 square foot interior living space, 575 square feet of lanai area, and 830 square feet of storage and a ceramic studio.

electrical, water, refuse collection, telephone, cable, and natural gas services are available to the subject property, via Road G. An individual wastewater system septic tank and leach field will be located adjacent to the SFR.

AGENCY COMMENTS:

The CDUA was referred for review and comment to the DLNR – Division of Forestry and Wildlife, Kauai Branch - Historic Preservation Division, Engineering Division, Kauai District Land Office, Commission on Water Resource Management, Division of Aquatic Resources, Division of Conservation and Resources Enforcement, Kauai County Planning Department, County of Kauai Council Services, Office of Hawaiian Affairs, Department of Health, and Office of Environmental Quality Control. The following comments were received:

Kauai District Land Office

No Comment.

Commission on Water Resource Management

No Comment.

Historic Preservation Division

An acceptable archeological assessment or inventory survey found no historic properties; thus we believe that “no historic properties will be affected” by this undertaking.

Engineering Division

According to the Flood Insurance Rate Map (FIRM) the project site is located in Zone VE; the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal regulations whenever developments within a Special Flood Hazard Area is undertaken. For questions about local flood ordinances please contact the County of Kauai, Department of Public Works, NFIP coordinator.

Applicant Comment: The civil engineer has confirmed that the proposed SFR will be located within Flood Zone VE 23. The lowest horizontal structural member of the proposed residence will be elevated at or above 23 MSL. During the County's building permit review process, structural and non-structural members of the proposed SFR will be reviewed by the Department of Public Works for compliance with the NFIP and County's flood ordinance.

Division of Aquatic Resources

Significant adverse impacts to aquatic resource values are not expected from the proposed SFR. Precautions should be taken to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing, blowing or leaching into the aquatic environment.

Applicant Response: Best Management Practices (BMP), appropriate solid and toxic waste disposal, regular site cleanup, and other such precautions will be taken to prevent petroleum products, construction debris, noxious paint products, chemical residue, landscaping chemicals, and other potential contaminants from flowing, blowing, or leaching into the aquatic environment.

Office of Hawaiian Affairs

OHA requests you contact our Kauai Community Resource Coordinator who can best advise you with whom else you should contact about ground disturbances in this area and the potential for discoveries of Iwi kupuna and Native Hawaii cultural sites. OHA had requested the creation of a burial treatment plan (to be approved by the Kauai/Niihau Islands Burial Council) in preparation for potential burial discoveries, however no such burial treatment plan was created. A subsequent Archeological Inventory Level Survey was conducted; when no cultural material was found, the State Historic Preservation Division (HPD) concurred that no further archeological work would be necessary. Haena Point once held a large, traditional Hawaiian settlement...the proposed SFR would be in close proximity to the large habitation and burial area...and the Archeological Inventory Survey noted, "Burial sites exist in the area, and it is possible that such sites could be encountered on the subject parcel." OHA's concerns have not changed in the matter, but will rely on the applicant's written assurances to us that should iwi or Native Hawaiian cultural deposits be found during ground disturbance, work will cease, and the appropriate agencies be contacted pursuant to applicable law.

Applicant Response: The HPD found the Archeological Inventory Survey and methodology to be acceptable and concurred with the recommendation that no further archeological work be necessary prior to construction. Contact was made with the Kauai Community Resource Coordinator for OHA and was assured that should burials or Native Hawaiian cultural deposits be found during disturbance, work will cease, and the appropriate agencies, including the Kauai/Niihau Islands Burial Council shall be contacted pursuant to applicable law.

Office of Environmental Quality Control

OEQC notes: 1) in Exhibit 8 the surveyor indicated that the site is located in flood zone VE 24. On page 9 and 10 the EA indicated that the site is in flood zone VE 23 (please check the discrepancy); 2) does the 27 foot high SFR exceed County building standards and/or is a height variance required; 3) please consult with the DOH regarding the individual septic system.

Applicant Comment: There was a typographical discrepancy between sections of the text and exhibit; the engineer has confirmed that the proposed SFR will be located within Flood Zone VE 23. The SFR's 27-foot height does not require a County of Kauai zoning height variance, or a County, Department of Public Works building height variance. An Individual Wastewater System (IWS) will treat wastewater; plans will be submitted to the DOH for review and approval.

ANALYSIS:

Staff notes an exception is made for the submittal and processing of CDUA KA-3280 from the Single Family Residential Standards for the required Minimum Lot Size of 10,000 square feet, pursuant to criteria number 3, "lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et. al. v. Heirs of Ahi. et. al., Civil No. 30, Fifth Circuit Court, State of Hawaii. The amendment to Chapter 13-5, HAR, took place effective November 14, 2005 (Exhibit 5).

Following review and acceptance for processing, the applicant was notified, by letter dated December 27, 2005 that:

1. The proposed use is an identified land use (L-6, SINGLE FAMILY RESIDENCES, D-1) within the Limited Subzone of the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR); please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the January 8, 2006 issue of the Environmental Notice.

Staff notes the FONSI was published in the OEQC's Environmental Notice on March 23, 2006.

13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel, however the action is consistent with the purpose of the Conservation District. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities.

Staff notes the proposed SFR is an identified land use within the Limited subzone; which is restrictive regarding land use development. However, Staff notes that the proposed project has met the restrictive criteria and that adequate mitigation measures have been taken to the protected natural resources of the coastal area.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Via letter, dated April 12, 2004, the project is located within the County's Special Management Area (SMA) however construction of a SFR is exempt from the County's SMA regulations.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. The site is currently landscaped. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

Staff reiterates that the Board of Land Natural Resources' 1981 policy amendment allows single-family residential use in the partitioned area located in the Limited subzone known as the "Haena Hui Subdivision." Haena Hui is different than other areas within the Conservation District due to its unique history.

In 1967, the Kauai Courts approved the Haena Hui Subdivision. This was done without the consent of the Board of Land and Natural Resources (Board). The BLNR considered this issue in 1980 and determined that the individuals involved acted in good faith by applying to and following the dictates of the courts in the matter, albeit the oversight of the Board's requirements to first obtain a permit for subdivision. Following this chain of events, the Board adopted a policy that residential lots within Haena Hui subdivision (save for certain lots with poor developmental qualities, such as some beach lots), would qualify for one residential structure, subject to some special and standard conditions, which are herein incorporated.

Notwithstanding this policy, and notwithstanding a change in the policy by the Board, the Board still retains its discretionary authority over all matters with respect to land use within the Conservation District

The proposed use is an identified land use, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1." The applicant proposes to construct a 2,990 SFR. However, staff has computed the SFR to be approximately 3,038 square feet; this includes 1,586 square feet of living space, 156 square feet of small lanai, 464 square feet of large lanai, and 832 square feet of downstairs storage and ceramics studio. Staff notes the proposed SFR is still less than the 3,500 square foot SFR that would normally be allowed under HAR, Section 13-5-23.

The applicant will preserve the natural beauty and open space characteristics of the subject parcel around the SFR with appropriate building design and landscaping, thus staff is of the opinion that the proposed SFR will not result in substantial adverse impacts to natural resources. However, staff notes should further landscaping occur that the applicant receive our approval, prior to construction. Staff notes the proposed project meets the Minimum Setback requirements of fifteen (15) feet on all sides.

Staff notes the ceramics studio was not added into the CDUA application until the Final EA document was submitted for a FONSI. Staff notes this detail should have been added into the CDUA and DEA as part of the public comment process. However, staff notes the ceramics studio, if it meets the applicable County of Kauai standards, should be permitted by the Board of Land and Natural Resources (Board), and if the minimum 3,500 square foot Maximum Developable Area is not exceeded. However, staff suggests to the Board that the ceramics studio will not be used for commercial purposes, and used for habitation purposes.

Staff notes the applicant is requesting a variance of two (2) feet from the Maximum Height Limit of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building." Staff recommends the Board of Land and Natural Resources approve the request for a two-foot variance to meet Federal and County flood regulations.

Staff comments that there is significant potential for fugitive dust to be generated during the proposed action, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a

potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including by not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA KA-3280 for the proposed Ochwat Single Family Residence, located in Haena District, Island of Kauai, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by

the Department; further, all work and construction must be completed within three years of the approval;

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant will use Best Management Practices for the proposed project;
9. The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;
10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. That the ceramics studio is approved if it meets applicable County of Kauai standards, and if the minimum 3,500 square foot Maximum Developable Area is not exceeded. The ceramics studio will not be used for commercial purposes, and/or used for habitation purposes.
15. That the applicant shall execute a waiver and indemnity prior to construction plan approval that is satisfactory to the Department;

16. Other terms and conditions as may be prescribed by the Chairperson; and
17. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,



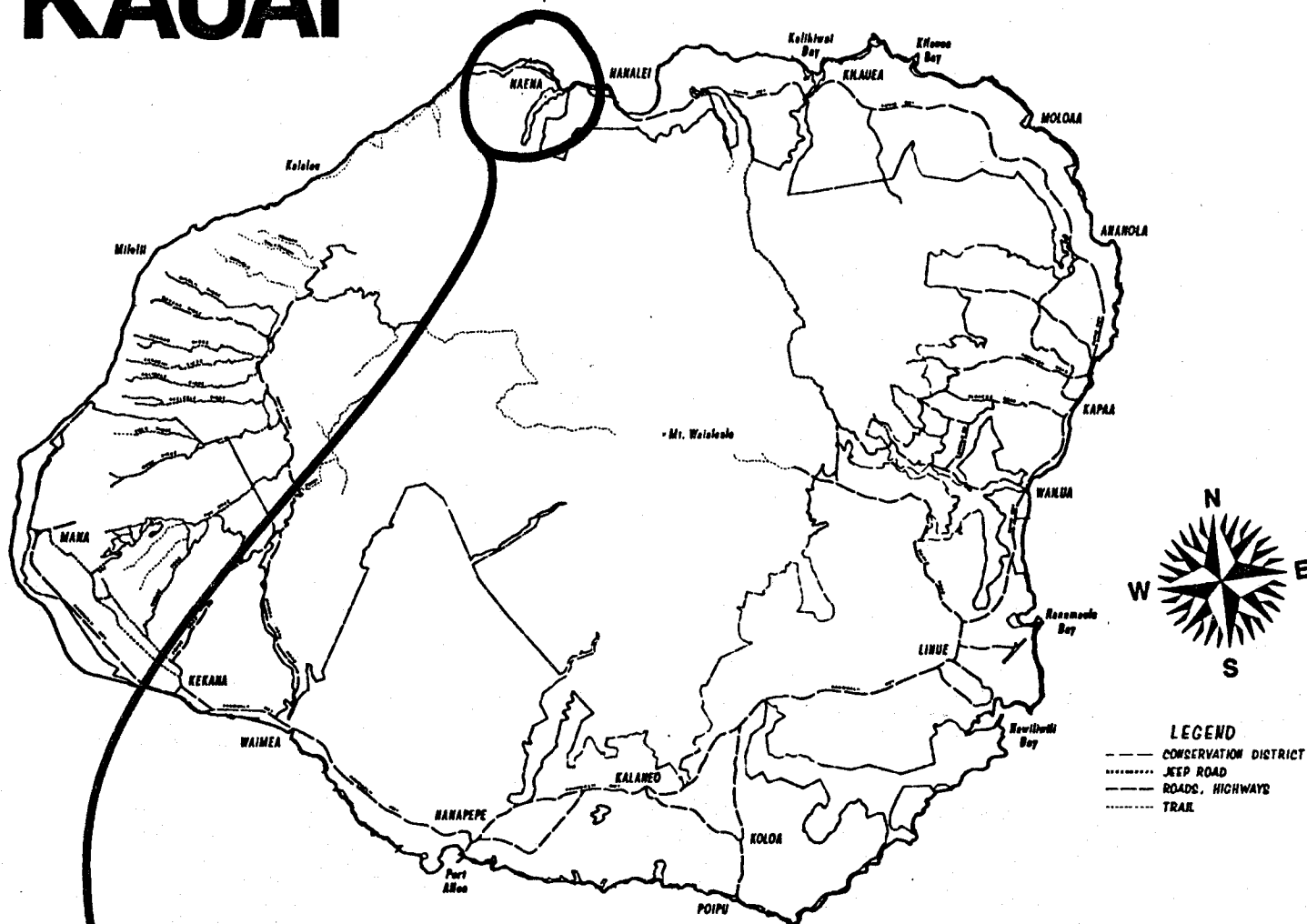
Dawn T. Hegger
Staff Planner

By:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

KAUAI



→ Proposed Ochwat Single Family Residence

TMK: (4) 5-9-002:058

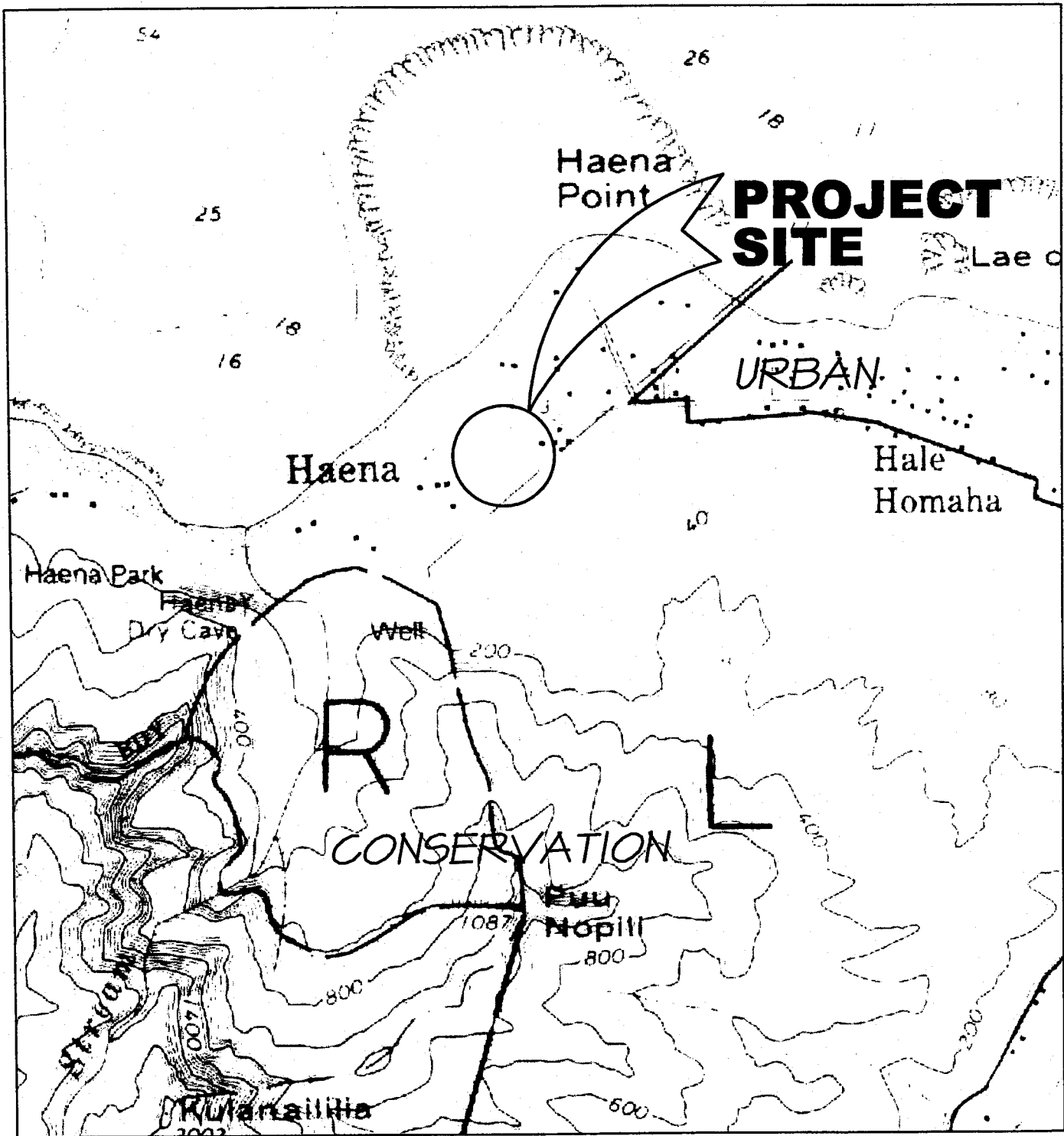
Haena, Kauai

EXHIBIT 1



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



OCHWAT RESIDENCE

STATE CONSERVATION DISTRICT SUBZONE MAP

HAENA, KAUAI, HAWAII

T.M.K. (4) 5-9-02:58

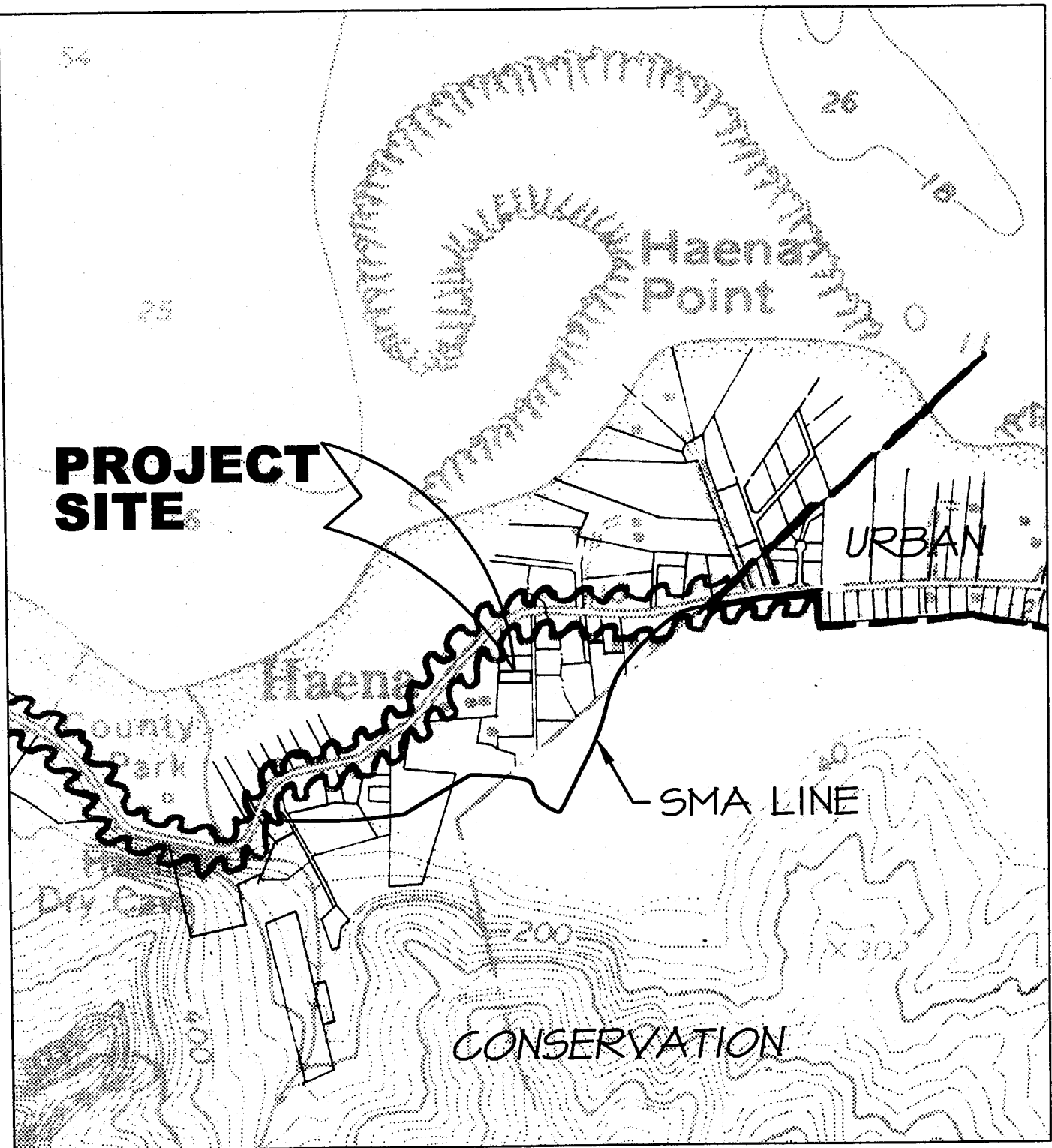
SHEET

EXHIBIT 2



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



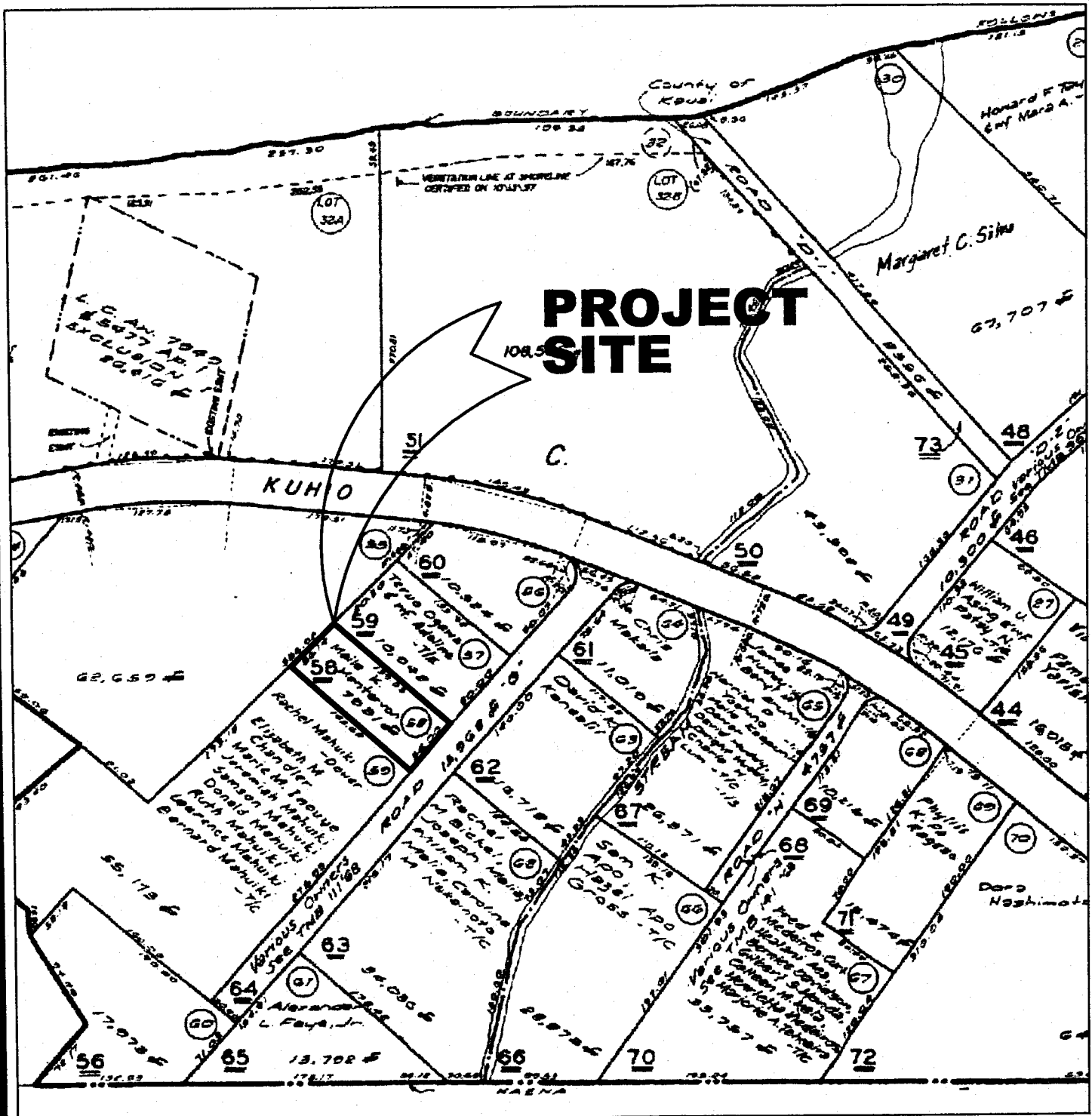
OCHWAT RESIDENCE

COUNTY ZONING MAP

HAENA, KAUAI, HAWAII

T.M.K. (4) 5-9-02:58

SHEET



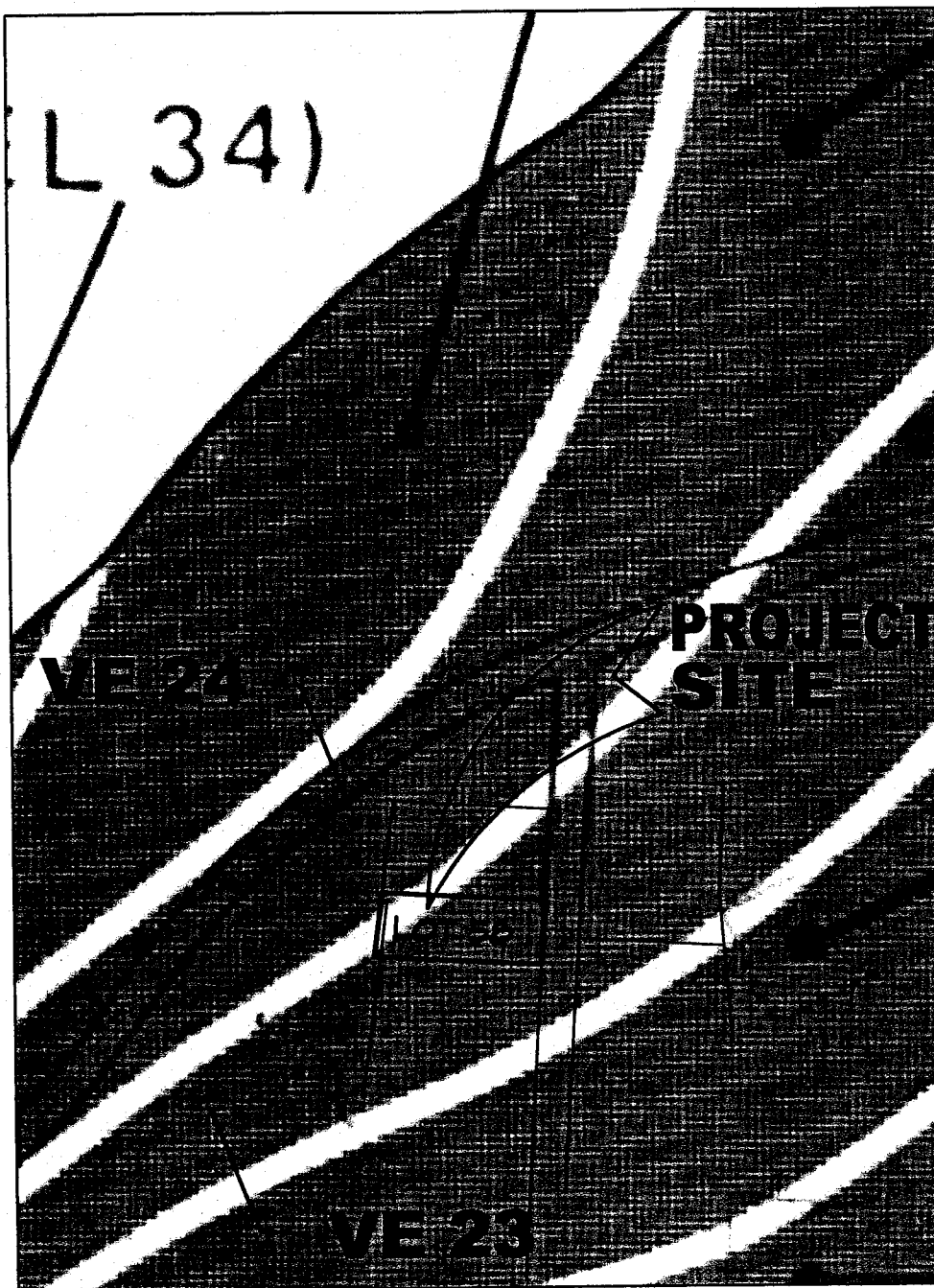
OCHWAT RESIDENCE
TAX MAP (4) 5-9 -02:58
HAENA, KAUAI, HAWAII

SHEET



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



SUBJECT PARCEL LIES PRIMARILY WITHIN FLOOD ZONE VE 23, COASTAL
HIGH HAZARD AREA SUSCEPTIBLE TO TSUNAMI INUNDATION
PER FIRM MAP # 1500020030 D DATED OCTOBER 18, 2002

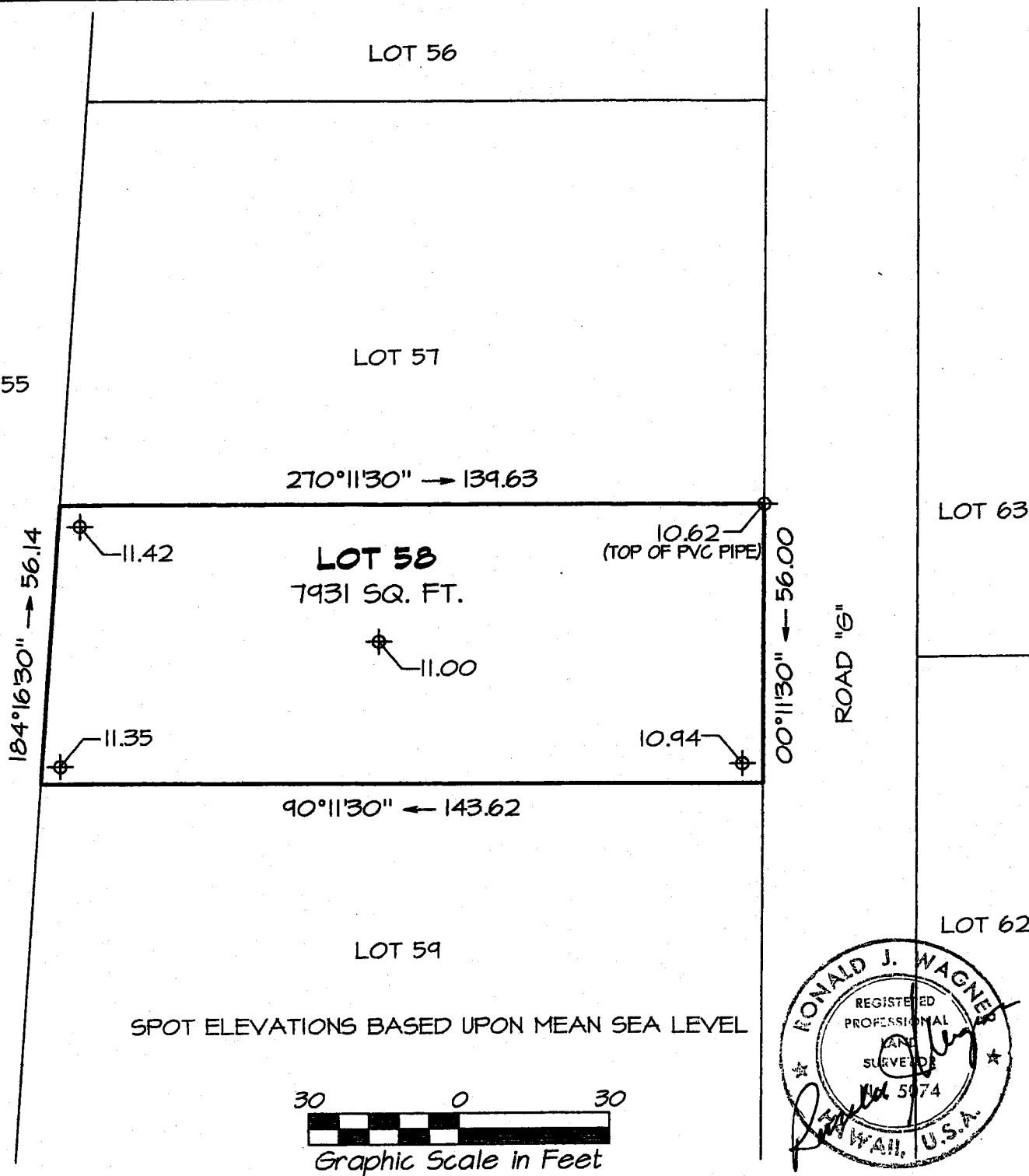
OCHWAT RESIDENCE
FLOOD ZONE
HAENA, KAUAI, HAWAII
T.M.K. (4) 5-9-02:58

SHEET



Wagner Engineering Services, Inc.

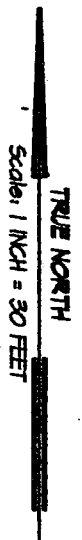
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



OCHWAT RESIDENCE
ELEVATION CERTIFICATE
HAENA, KAUAI, HAWAII
T.M.K. (4) 5-9-02:58

SHEET

EXHIBIT 3



LOT 63

LOT 62

LOT 56

LOT 57

LOT 55

$270^{\circ}11'30'' \rightarrow 139.63$

LOT 58 - 7,931 SF

15 FT

$184^{\circ}16'30'' \rightarrow 56.14$

± 1.41 FT

DECK

20 FT

DECK

DRIVE WAY

83' 0"

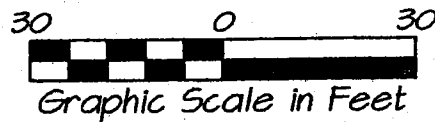
15 FT.

$00^{\circ}11'30'' \leftarrow 56.00$

ROAD "G"

$90^{\circ}11'30'' \leftarrow 143.62$

LOT 59



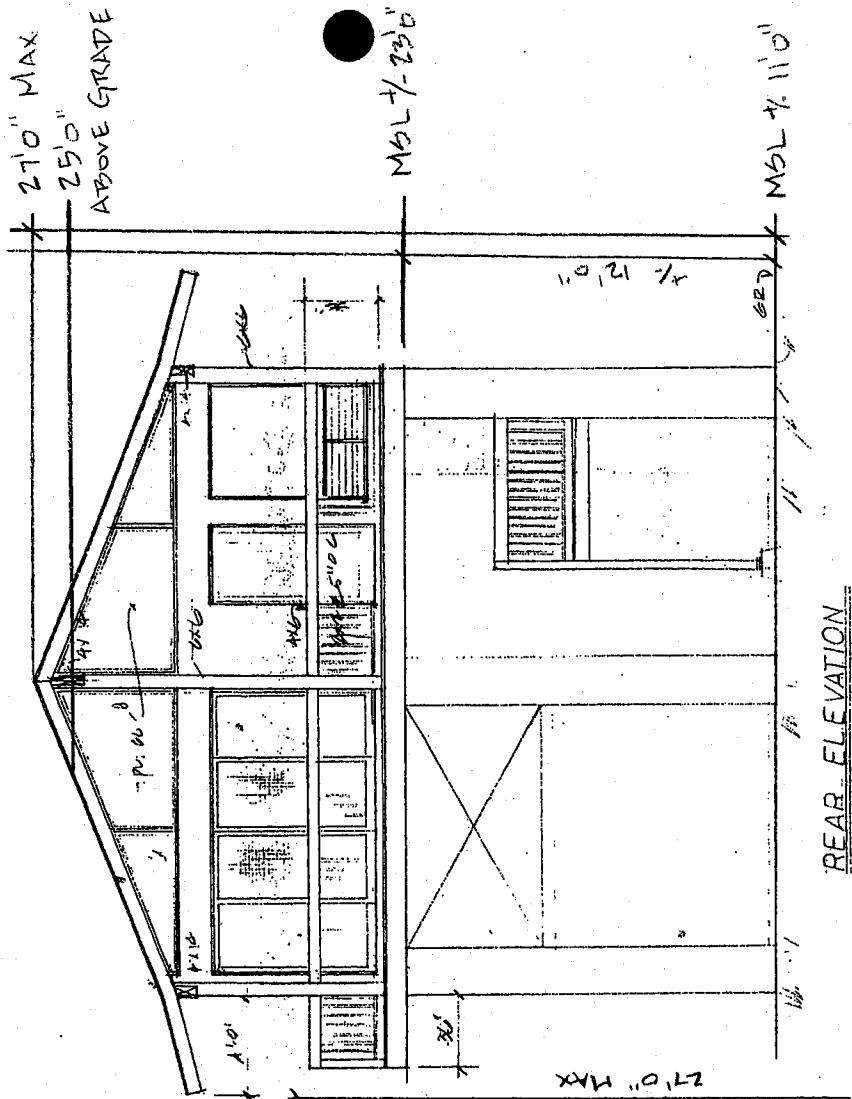
OCHWAT RESIDENCE
PLOT PLAN
HAENA, KAUAI, HAWAII
T.M.K. (4) 5-9-02:58

SHEET

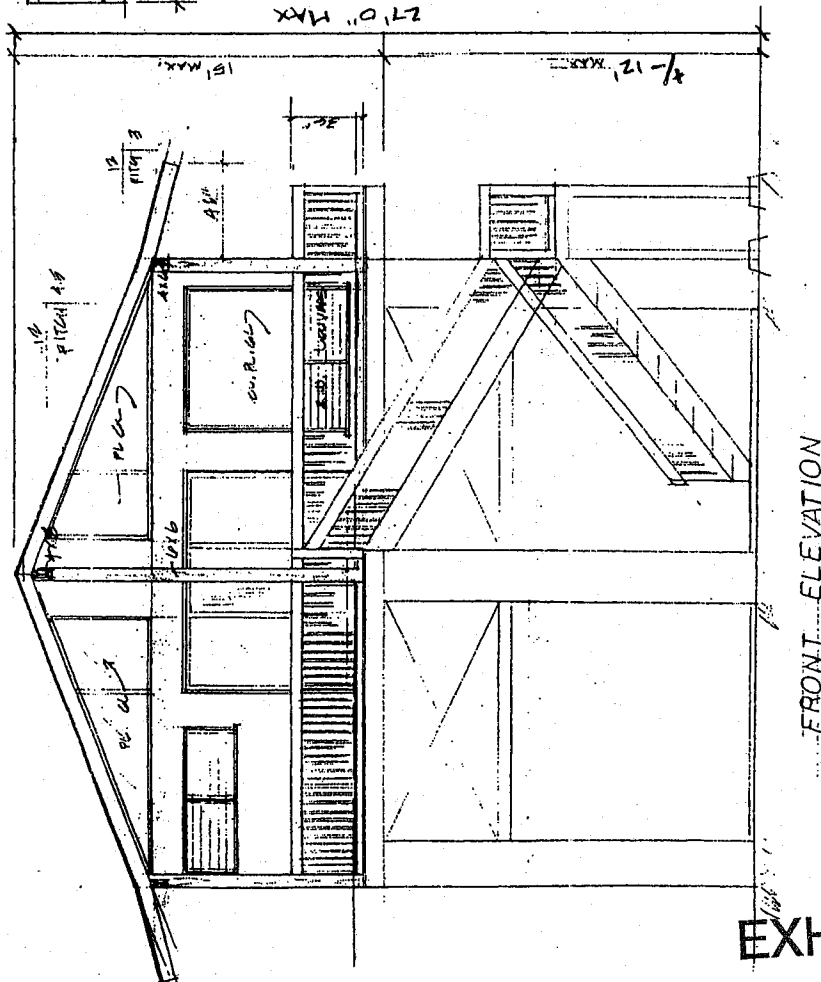


OCHWAT RESIDENCE
RIGHT (Nth) ELEVATION
HAENA, KAUAI, HAWAII
T.M.K. (4) 5-9-02:058

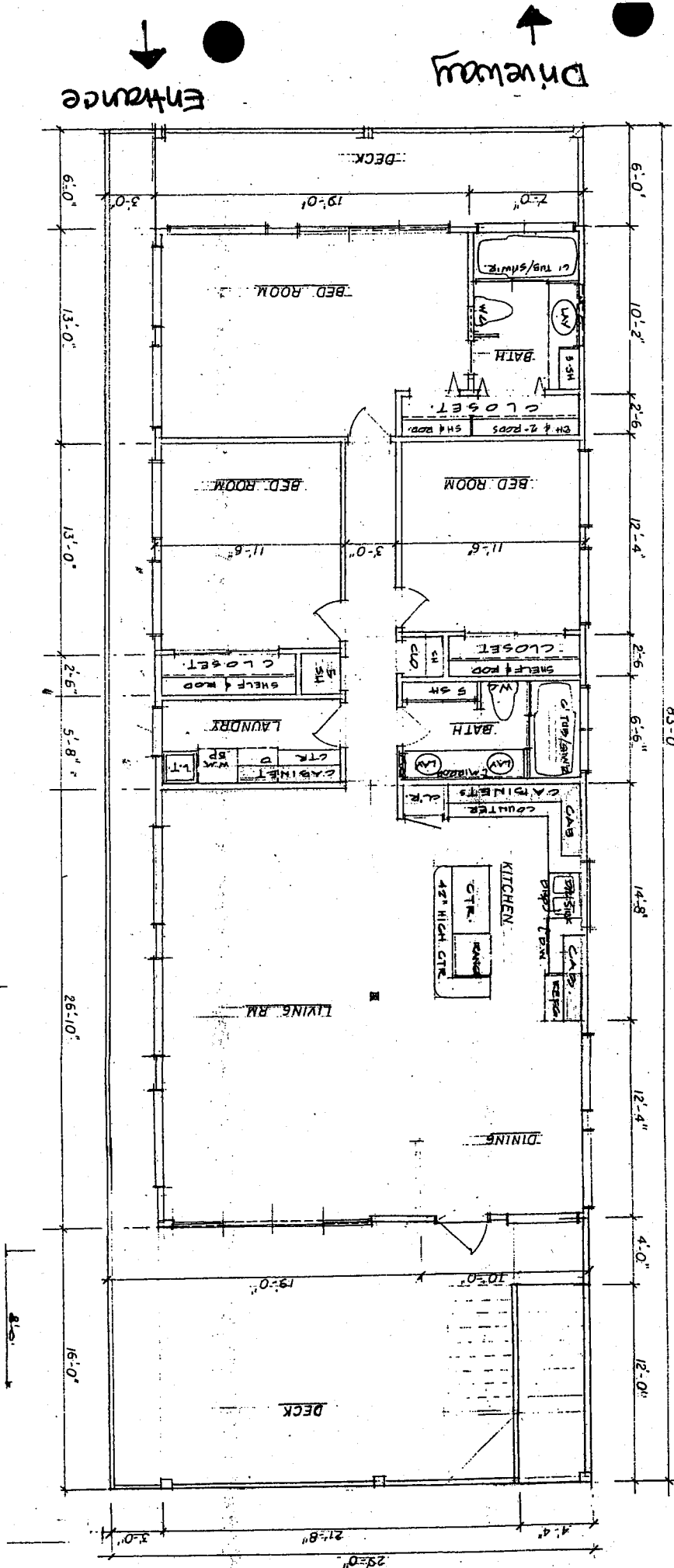
EXHIBIT 4



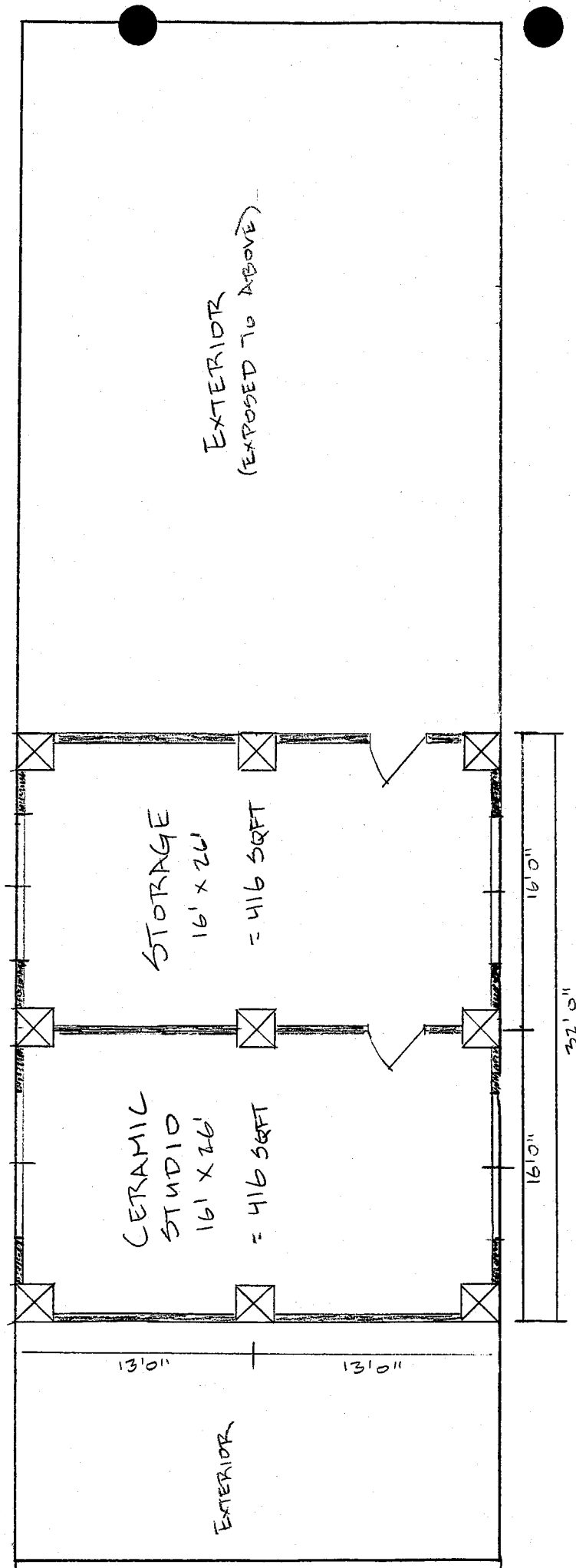
OCHWAT RESIDENCE
 FRONT + REAR ELEVATIONS
 HAENA, KAWAI, HAWAII
 T.M.K. (4) 5-9-02: 05B



* REDUCED - NOT TO SCALE



OCHWAT RESIDENCE
 FLOOR PLAN
 HAEPA, KAMAI, HAWAII
 T.M.K. (4) 5-9-02:058



OCHWAT RESIDENCE
LOWER LEVEL FLOOR PLAN
HAENA, KAUAI, HAWAII
T.M.K. (4) 5-9-02:058

EXHIBIT

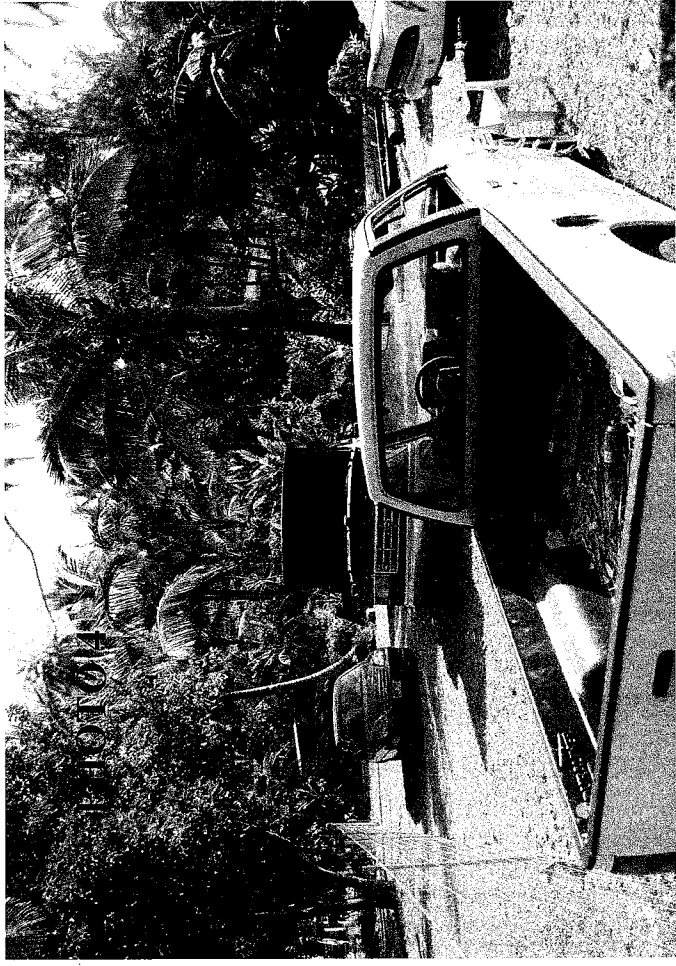
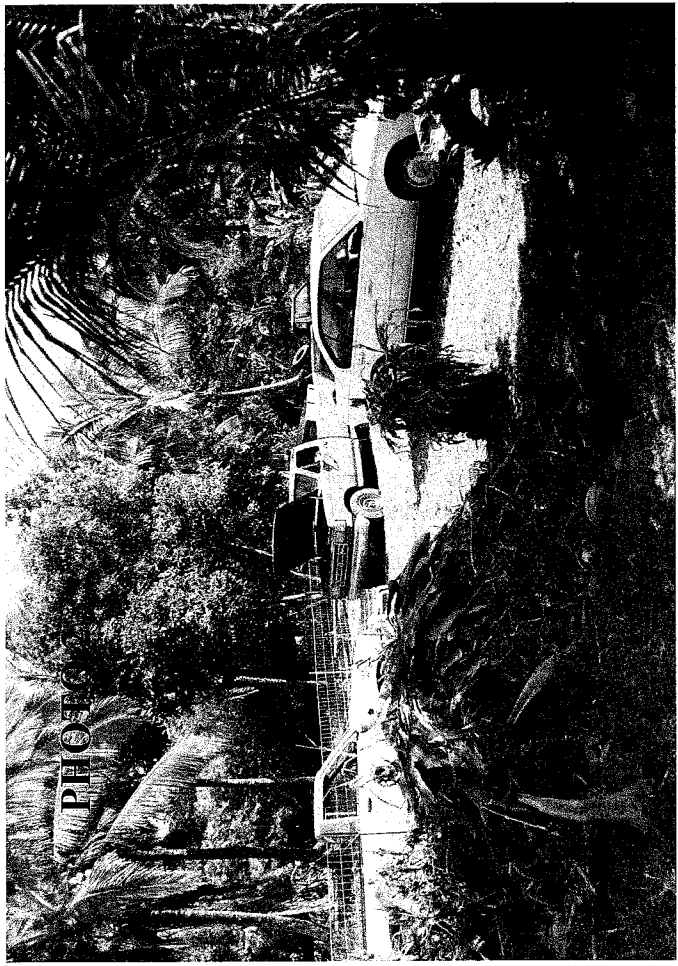


EXHIBIT 4 - SITE PHOTOS

Exhibit 4

Single Family Residential Standards: September 9, 2005

Minimum Lot Size: 10,000 square feet

Exceptions:

- 1) kuleana
- 2) nonconforming use
- 3) lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et al. v. Heirs of Ahi, et al., Civil No. 30, Fifth Circuit Court, State of Hawaii.

Minimum Setback: For lots 10,000 square feet to one acre:

Front: 15 feet
Sides: 15 feet
Back: 15 feet

For lots over one acre:

Front: 25 feet
Sides: 25 feet
Back: 25 feet

Exceptions: Site characteristics and lot shape may be a factor in adjusting minimum setbacks when so determined by the board.

Maximum Developable Area:

Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all enclosed (on three sides minimum, with floor or roof structure above) living areas; above grade decks in excess on 4'-0" in width; garage or carport; swimming pools, saunas or other developed water features (excluding naturally